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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 461

WILLIAM GREENOUGH et al, Trustees,
Appellants

v.

TAX ASSESSORS of the Cty of Newport,
Appellees.

Brief in opposition to Appellees' statement of matters making against the jurisdiction of the court and motion to dismiss the appeal.

WILLIAM R. HARVEY
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BRIEF IN OPPOSITION TO APPELLEES' STATEMENT OF MATTERS MAKING AGAINST THE JURISDICTION OF THE COURT AND MOTION TO DISMISS THE APPEAL.

PRESENT QUESTION INVOLVED

This brief is filed in opposition to the appellees' motion to dismiss the appeal. The case is upon appeal from the superior court of Rhode Island under Section 344 of Title 28 of the United States Code which is Section 237 of the Judicial Code, on the ground that

there was drawn into question the validity of a statute of the state.

The case below is reported in 47 A. 2nd. 625.

The Appellees' motion contains six points or grounds.

I

The Appellants urge that the motion to dismiss should not be granted for the reasons set forth below.

AS TO GROUND I

All questions presented to the court were decided by it and in such manner that the court's finding on the constitutionality of the statute in question became the controlling factor in the case. The final result and judgment for the defendants was based on the holding that the statute was not unconstitutional. The court has jurisdiction to review this decision on appeal.

State of Indiana ex rel Anderson v. Brand.
58 S. Ct. 443, 303 U. S. 95;

Rogers v. County of Hennepin.
36 S. Ct. 265, 240 U. S. 184;

International Steel Co. v. National Surety Co.
56 S. Ct. 619; 297 U. S. 657;

Commonwealth of Virginia v. Imperial Coal Sales Company. 55 S. Ct. 12, 293 U. S. 15;

Grayson v. Harris. 45 S. Ct. 317, 267 U. S. 352.

AS TO GROUND II

The state court heard the case and decided it on the merits and held that there was no voluntary payment of the tax and that the petition filed by the appellants was the proper way to raise the question decided by the court, namely whether or not the statute brought into question was constitutional when applied to the facts of this case.

Rogers v. County of Hennepin, 36 S. Ct. 265, 240 U. S. 184;

Commonwealth of Virginia v. Imperial Coal Sales Co. 55 S. Ct. 12, 293 U. S. 15;

United Gas Public Service Co. v. State of Texas, 58 S. Ct. 185, 303 U. S. 183.

AS TO GROUND III

This case is a statutory petition for relief from a tax assessment and is the proceeding prescribed by the law of Rhode Island for the relief from an illegal assessment of a tax G. L. Rhode Island, 1938, Chapter 31, Sec. 14:

> "SEC. 14. Any person aggrieved on any ground whatsoever by any assessment of taxes against him in any city or town, may within 3 months after the last day appointed for the payment without penalty of such tax, or the first installment thereof, if such tax be payable in installments, file a petition in the superior court for the county in which such city or town lies for relief from such assessment to which petition the assessors of taxes of said city or town in office at the time such petition is filed shall be made parties respondent. . . .
>
> "*Provided, however*, that in case such person has not filed an account, he shall not have the benefit

of the remedy provided in this section and in sections 15 and 17 of this chapter unless (1) his real estate has been assessed at a value in excess of the value at which it was assessed on the last preceding assessment day, whether then owned by him or not, and has been assessed at a value in excess of its full and fair cash value; or (2) the tax assessed is illegal in whole or in part; and his remedy shall be limited to a review of the assessment on such real estate or to relief with respect to such illegal tax, as the case may be.

"The remedy provided in this section shall be exclusive if the taxpayer owned or possessed any ratable estate at all, except that in a proper case the taxpayer may invoke the equity jurisdiction of the superior court provided the bill in equity is filed within 3 months after the last day appointed for the payment without penalty of such tax or the first installment thereof, if such tax be payable in installments. A taxpayer alleging an illegal or void tax assessment against him shall be confined to the remedies provided by this section. (P.L., 1935, Chap. 2260, amending P. L., 1932, Chap. 1945.)"

There is no requirement that the tax be paid or the property levied upon. The Supreme Court of Rhode Island heard and decided the federal question. Where the state court deems the federal question to be before it and actually decides it adversely to the federal right asserted, this court has jurisdiction on appeal.

The court said in

State of Indiana ex rel Anderson v. Brand, supra,

"Where the state court does not decide against a petitioner or appellant upon an independent state ground, but deeming the federal question to be

before it, actually entertains and decides the question adversely to the federal right asserted, this Court has jurisdiction to review the judgment if, as here, it is a final judgment. We cannot refuse jurisdiction because the state court might have based its decision, consistently with the record, upon an independent and adequate non federal ground."

Rogers v. County of Hennepin
365 S. Ct. 265, 240 U. S. 184;

Mallinkrodt Chemical Works v. State of Missouri,
35 S. Ct. 671, 238 U. S. 41;

Hancock National Bank v. Farnum,
176 U. S. 640, 20 S. Ct. 506;

North Carolina R. R. Co. v. Zachary,
34 S. Ct. 305, 232 U. S. 248;

Meidreich v. Lauenstein, 34 S. Ct. 309, 232.

Meidreich v. Lauenstein,
34 S. Ct. 309, 232 U. S. 236.

AS TO GROUND IV

The non federal questions were heard by the court and the court disposed of them and then considered and decided the constitutional question which became essential to the final determination of the case.

The instant case presents a perfect situation for the exercise by this court of its power to correct an error of a state court in ruling on a federal question.

See cases cited supra.

AS TO GROUND V

The amount actually involved in this present suit is small but the will shows a very substantial amount to be finally involved. However, the fundamental question upon which the judgment in the cause rested, whether, under the circumstances present in this case, a state has the right to levy a tax on a foreign trust estate when the beneficiary and the co-trustee are residents of the State of New York and the trust res is located in the State of New York, is of the utmost importance. The question is a substantial one.

Buel v. Van Ness, 8 Wheat. 312, 5 L.Ed. 624;
Barry v. Mercein, 5 How. 103, 120, 12 L. Ed. 70;
Weston v. Charleston, 2 Pet. 449, 7 L. Ed. 481;
Holmes v. Jennison, 14 Pet. 540, 10 L. Ed. 579.

AS TO GROUND VI

This is untrue. The cases believed to sustain jurisdiction are cited on page 19 of the statement as to jurisdiction.

The motion to dismiss should not be granted.

Respectfully submitted.

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